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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/102,200	06/20/98	JORGENSON	9 200990/2013

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M LAWRENCE OLIVERIO
WOLF GREENFIELD AND SACKS
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON MA 02210-2211

EXAMINER	
WARD, P	
ART UNIT	**PAPER NUMBER**
1723	7

DATE MAILED: 08/04/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/082,200	Applicant(s) Jorgensen et al
	Examiner Richard W. Ward	Group Art Unit 1723

X Responsive to communication(s) filed on *Feb 10, 1999* .

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

X Claim(s) *1-48* is/are pending in the application.

Of the above, claim(s) *10, 11, 28-33, and 45-47* is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

X Claim(s) *1-9, 12-27, 34-44, and 48* is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

X See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

X The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____ .

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

X Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

X Notice of References Cited, PTO-892

X Information Disclosure Statement(s), PTO-1449, Paper No(s). *5*

Interview Summary, PTO-413

X Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- *SEE OFFICE ACTION ON THE FOLLOWING PAGES* ---

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1-9, 12-27, 34-44, and 48, drawn to a centrifuge, classified in class 494, subclass 13.

   II. Claims 10-11, 28-30, and 45-47, drawn to a method of using a centrifuge, classified in class 494, subclass 37.

   III. Claims 31-33, drawn to a method of processing a biological cell material, classified in class 435, subclass 243.

2. The inventions are distinct, each from the other because of the following reasons: Inventions II and I, and III and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus can be used to practice a materially different process, e.g., the following apparatus limitations were not addressed in some or all of the process claims: a motor mechanism, process controls, coaxially receivable containers, a heater mechanism, etc.

3. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different

functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation and different effects.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II or III, and the search required for Group II is not required for Group III, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Ivan Zitkovsky on 7/12/99 a provisional election was made without traverse to prosecute the invention of Invention I, claims 1-9, 12, 27, 34-44, and 48. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-11, 28-33, and 45-47 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any

amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

9. The corrected or substitute drawings were received on 11/9/98. These drawings are acceptable.

Specification

10. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

11. The abstract of the disclosure is objected to because it is not written in narrative form (see above). Correction is required. See MPEP § 608.01(b).

12. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (e.g., claims are no longer directed to a method).

Claim Rejections - 35 USC § 112

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claim 48 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 48 recites a sensor which is connected to a program. Because a program does not have physical structure, it cannot be physically connected to the sensor; thus, the claim is indefinite. For the purposes of initial examination, it will be assumed that the sensor is connected to a programmable controller.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 23, 26-27, 34, 36, 39-40, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Brierton (US 5,356,365). Brierton [365] discloses an apparatus for expressing comprising a flexible fluid container (column 6, lines 44-46), rotor/housing **90** having a diaphragm **102** (flexible wall/membrane) which separates the enclosure within said housing into

two sections, expresser fluid source **42**, pump **46**, retaining mechanisms (column 6, lines 26-46), filling mechanisms **78**, and heat controller **210**. Brierton [365] also discloses a configuration in which the bottom expresser fluid **38** is located radially outward from one or more of the fluids located in the upper compartment **34**, see figure 1.

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

18. Claims 1-9, 12-22, 24-25, 37-38, and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brierton (US 5,356,365) in view of Hein (US 3,244,362).

As to claims 1-9, 12-22, 24-25, 37-38, and 42-43, Brierton [365] discloses all aspects of said claims except for a high density expresser fluid and an elastomeric sheet material. Specifically, Brierton [365] discloses an apparatus for expressing comprising a flexible fluid container (column 6, lines 44-46), rotor/housing **90** having a diaphragm **102** (flexible wall/membrane) which separates the enclosure within said housing into two sections, expresser fluid source **42**, pump **46**, retaining mechanisms (column 6, lines 26-46), filling mechanisms **78**, and heat controller **210**. Brierton [365] also discloses a configuration in which the bottom

expresser fluid **38** is located radially outward from one or more of the fluids located in the upper compartment **34**, see figure 1. Hein [362] teaches a high density expresser fluid (column 6, lines 22-40). It would have been obvious to one having ordinary skill in the art at the same time the invention was made to use the high density expresser fluid of Hein [362] in place of the generically stated fluid of Brierton [365] for the purpose of ensuring proper runnability (i.e., by preventing premature sealing which could result in an inability to properly express fluid -- see column 6, lines 30-34 of Hein [362]. In addition, based upon the mode of operation of the apparatus of Brierton [365] and Hein [362] (see figures 2-3), it is inherent that the diaphragms of both are made from elastomeric sheet materials, or in the alternative, it would have been obvious to one having ordinary skill in the art at the same time the invention was made to make said diaphragms from an elastomeric sheet material for the purpose of providing a material which can recover its original shape after being deformed as in figures 2-3 of Hein [362].

19. Claims 35, 41, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brierton [365] or Brierton [365] in view of Hein [362] as applied to claims 1, 34, and 40 above, and further in view of Perry et al (Perry's Chemical Engineers Handbook, 6th edition).

Claims 35, 41, and 48 recite the additional limitations of automated temperature control using a program and a temperature sensor. Brierton [365] discloses controlling temperature (column 7, lines 58-59), but fails to positively recite a heater which uses a sensor and a program. Perry et al teaches a well known temperature controlling means (see pages 22-4 and 22-5) comprising a sensor and programmable controller. It would have been obvious to one having ordinary skill in

the art at the same time the invention was made to use the temperature controlling means of Perry et al in the heater of Brierton [365] or in the heater of Brierton [365], as modified by Hein [362], for the purpose of decreasing operator responsibilities and for improving the accuracy of control (see page 22-4, first paragraph). Note: see assumptions with regards to 35 USC 112, 2nd paragraph rejections above.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Headley et al (US 5,733,253) discloses a similar apparatus which preferably uses a lower density expresser fluid. McMannis et al (US 5,368,542) discloses an apparatus which is similar to the apparatus of Brierton [365].

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard W. Ward whose telephone number is (703)305-0536. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Walker, can be reached on (703)308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703)305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703)308-0661.

R.W.W.

July 24, 1999

W. L. WALKER
PRIMARY EXAMINER
GROUP 1300